

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

AARON SCOTT,

Petitioner,

-vs-

WARDEN, Mansfield Correctional
Institution,

Respondent.

:

Case No. 3:12-cv-146

:

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

:

**ORDER WITHDRAWING REPORT AND RECOMMENDATIONS
AND SETTING ANSWER AND TRAVERSE DATES**

This habeas corpus case is before the Court on Respondent's Motion to Dismiss the Petition as time-barred (Doc. No. 9). The Magistrate Judge filed a Report and Recommendations recommending that the Motion be denied (the "Report," Doc. No. 12). Respondent objected to the Report on the grounds that the documentation filed by Petitioner to show his Petition was timely in fact related to a filing in another court (Objections, Doc. No. 13, PageID 2562). However, based on other evidence, Respondent conceded that the Petition was timely filed. *Id.* at PageID 2563. Petitioner has never responded to the Objections to contest the correctness of Respondent's position. The Magistrate Judge is persuaded of the correctness of Respondent's position.

Accordingly, it is hereby ORDERED that (1) the Report (Doc. No. 12) is WITHDRAWN and (2) the Motion to Dismiss (Doc. No. 9) is deemed MOOT.

Respondent shall, not later than March 1, 2013, file an answer conforming to the

requirements of Rule 5 of the Rules Governing § 2254 Cases. Specifically, said answer shall respond to each allegation made in the Petition, raise any affirmative defense relied on by Respondent, and state whether, from Respondent's perspective, Petitioner has exhausted his state remedies, including delayed appeal and post-conviction petition pursuant to Ohio Revised Code.

Petitioner may, not later than twenty-one days after the Answer is filed, file and serve a reply or traverse to the answer.

February 21, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge